Helen Lim Ah Hui & Ors v Ketua Pengarah Perkhidmatan Awam & Ors

HIGH COURT (KUCHING) — SUIT NO 22–91 OF 1999–I
IAN CHIN J
12 APRIL 2002

Public Servants *— Salary — Claim to higher salary scale — Decisions of Public Service Tribunal, effect of — Whether plaintiffs entitled to benefit from such decisions — Whether conditions stipulated in decisions fulfilled — Public Service Tribunal Act 1977 s 15(1) & (5)*

The plaintiffs took out the present action against the defendants who were the Public Service Department, the Government of Malaysia, the Sarawak Public Service Commission and the Sarawak State Government for declarations and order to the effect that the plaintiffs were qualified for and should have been placed on the C11 salary scale and for them to be paid arrears, bonuses and benefits from 1 July 1987. A declaration was also sought that they should have been placed on that salary scale from 1 July 1976. The plaintiffs were all, at the relevant time, placed on the less favorable F1–4 and later D11 salary scale. They claimed to be entitled to that salary scale on the basis of two decisions of the Civil Service Tribunal.

Held, dismissing the application:

What the plaintiffs were seeking to do was to challenge or seeks to review or to appeal against the decision of the two tribunals and this was expressly prohibited under s 15(1) of the Public Service Tribunal Act 1977 ('the Act'). The plaintiffs sought the benefit of the two decisions under s 15(5) of the Act but clearly they did not satisfy the condition set by the two tribunals of having been regraded in 1975, not earlier and not later. The court should not usurp the functions of the tribunal or the government in matters of salary scales and conditions of service (see pp 479H–480A); *Government of Malaysia v Rohaya bte Mohd Majzub & Ors* [1989] 1 MLJ 96 followed.

[**Bahasa Malaysia summary**

Plaintif-plaintif memulakan tindakan ini terhadap defendan-defendan yang merupakan Jabatan Perkhidmatan Awam, Kerajaan Malaysia, Suruhanjaya Perkhidmatan Awam Sarawak dan Kerajaan Negeri Sarawak untuk pengisytiharan-pengisytiharan dan perintah yang memberi kesan bahawa plaintif-plaintif adalah layak untuk dan seharusnya diletakkan pada skala gaji C11 dan agar mereka dibayar tunggakan, bonus dan manfaat-manfaat daripada 1 Julai 1987. Satu pengisytiharan juga dipohon supaya mereka diletakkan pada skala gaji itu daripada 1 Julai 1976. Plaintif-plaintif tersebut telah semuanya, pada waktu yang relevan itu, diletakkan pada skala gaji F1-4 yang kurang baik dan kemudiannya diletakkan pada skala D11. Mereka

menuntut sebagai berhak kepada skala gaji itu atas dasar dua keputusan Tribunal Perkhidmatan Sivil.

Diputuskan, menolak permohonan tersebut:

Apa yang plaintif-plaintif cuba untuk lakukan adalah mencabar atau memohon untuk kajian semula atau merayu terhadap keputusan kedua-dua tribunal tersebut dan ini sesungguhnya dilarang di bawah s 15(1) Akta Tribunal Perkhidmatan Awam 1977 ('Akta tersebut'). Plaintif-plaintif cuba mendapatkan manfaat kedua-dua keputusan tersebut di bawah s 15(5) Akta tersebut tetapi adalah jelas bahawa mereka tidak memenuhi syarat yang ditetapkan oleh kedua-dua tribunal tersebut, iaitu mereka mesti telah digredkan semula pada tahun 1975, tidak lebih awal atau lebih dari itu. Mahkamah tidak boleh merampas fungsi-fungsi tribunal tersebut atau kerajaan dalam perkara-perkara mengenai skala gaji dan syarat-syarat perkhidmatan tersebut (lihat ms 479H–480A); *Government of Malaysia v Rohaya bte Mohd Majzub & Ors* [1989] 1 MLJ 96 diikut.]

Notes

For cases on salary of a public servant, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1770–1774.

Cases referred to

Government of Malaysia v Rohaya bte Mohd Majzub & Ors [1989] 1 MLJ 96 (folld)

Legislation referred to

Public Service Tribunal Act 1977 ss 2, 15(1), 15A

Baru Bian (*Baru Bian*) for the plaintiffs.

Mohamad Taufik bin Mohd Yusoff (Senior Federal Counsel) for the first and second defendants.

Supian Tarmizi (State Legal Officer) for third and fourth defendants.

Ian Chin J:

Introduction

There are seven plaintiffs in this case, namely, Helen Lim Ah Hui, Doreen Tan Soon Boi, Rosalind Goh Lian Hiok, Shirley Au Kim Hua, Agatha Chong Fui Chin, Hanifah bte Dawi and Agnes Yap Nyuk Yin, who took out the present action on 26 July 1999 against the defendants who are the Public Service Department, the Government of Malaysia, the Sarawak Pubic Service Commission and the Sarawak State Government for declarations and order to the effect that the plaintiffs were qualified for and should have been placed on the C11 salary scale and for them to be paid

arrears, bonuses and benefits from 1 July 1987. A declaration is also sought that they should have been placed on that salary scale from 1 July 1976. The plaintiffs were all, at the relevant time, placed on the less favorable F1–4 and later D11 salary scale. They claimed to be entitled to that salary scale on the basis of two decisions of the Civil Service Tribunal.

The facts

All the plaintiffs were employed in Sarawak by the various departments of the government until their retirement. All plaintiffs were engaged as clerk on a salary scale called F1–4 in the respective years of 1961, 1959, 1960, 1963, 1966, 1961 and 1967. That salary scale was used notwithstanding that Bain's Report made on 1 January 1956 had recommended that clerks, both male and female, who had obtained Sarawak Junior Certificate ('the SJC') be regraded to the salary scale of D1A, 1–3 which carried a salary scale of RM135.410. The F1–4 scale for women is RM125.350. The recommendation was only partially implemented when the Sarawak State Secretary issued a circular on 10 May 1965, directing that all male clerks employed under the F1–4 salary scale be changed to the D1A, 1–3. Unfortunately for the women, the change did not apply to them and so they remained in the F1–4 salary scale. Then came the Suffian's Report on 1 January 1970 which resulted in the improvement of the women's salary scale of F1–4 to RM175.425. Some had their services terminated but were re-engaged either as 'clerk/typist' or 'typist' while some had their posts redesignated as such. None of their posts were regraded in 1975 but were done either before that year or after. With the regrading, the plaintiffs were placed in the D11 salary scale of RM235.595 following the Cabinet Committee's Report which took effect from 1 January 1976.

The seventh plaintiff had taken her case to the Public Services Tribunal ('the PST') pursuant to the provisions of the Public Service Tribunal Act 1977 ('the Act') where she lost her claim to be placed on the better salary scale of C11 instead of D11 and issue is taken as to whether this plaintiff can maintain the present action.

It is common ground that the historical facts set out in two decisions of the PST are to be accepted as correct for the purpose of this case.

The first decision of the PST came on 13 October 1988, (Reference Case No1 of 1988) (first decision) upon which (and upon another later decision) the plaintiffs said they are entitled to be placed on the C11 salary scale. That case was brought by the Sarawak Government Officers Association on behalf of female clerks employed under the F1–4 salary scale and who were regraded in 1975 as clerk/typist and placed in the D11 scale. They wanted the scale of C11 which were accorded to the male clerk. The first tribunal in their deliberation made the following findings (which I quote from the words of Mr Baru Bian, learned counsel for the plaintiffs which I find to be an accurate summary):

(1) Female clerks that were employed as clerk with the same qualification as that of the male clerks around the same time and doing the same

works or duties, were given a salary scale lower than their male colleagues.

(2) This was contrary to the Bain's Report, which recommended that the salary scale for male and female clerks should be the same.

(3) When the Suffian's salary scale was implemented, this wrong was not corrected.

(4) This was also contrary to the recommendation of the Suffian's Report, which recommended the same salary scales for male and female.

(5) Besides being given a lower salary scale from their counterparts, the female clerks were regraded in 1975 as clerk/typist, a post much lower than the clerk.

(6) Many of these female clerks were asked to do the same jobs as the male clerks in spite being retained in a lower scale.

(7) The re-grading of the female clerks as clerk/typist remained even into the time when the Cabinet salary scale was implemented, when they were regraded as D11 as compared with the male clerks who were given a higher scale as C11.

(8) The re-grading of a different salary scale for the clerk/typist (formerly clerk) has caused an anomaly in accordance with s 2 of the Act and should be corrected.

Consequently the first tribunal made the following ruling:

> 34 Untuk membetulkan anomali tersebut, kami memutuskan supaya kerani-kerani perempuan yang mempunyai kelulusan Sijil Sarawak Junior atau yang setaraf dengannya dan dilantik selepas perlaksanaan Laporan Suruhanjaya Bain tetapi sebelum perlaksanaan Laporan Suruhanjaya Suffian dan diberi tangga gaji F1-4 dan telah digredkan semula sebagai kerani/jurutaip dalam tahun 1975 hendaklah diberi pemindahan ke tangga gaji C11 mulai dari 1 Januari 1976, seperti yang dituntut oleh pemohon, secara isyarat. Sebarang tunggakan gaji hendaklah dibayar mulai 1 Julai 1987.

The defendants contended that the first tribunal for the purpose of rectifying the anomaly and acting under s 2 of the Act, made their decision that in order for the woman clerk to be converted to the salary scale C11 under the Cabinet Committee Report the candidate must: (i) possess a SJC or its equivalent; (ii) have been appointed to the post after the implementation of Bain's Report but before the implementation of Suffian's report; (iii) have been given the salary scale F1-4; and (iii) have been regraded to the post of clerk/typist in the year 1975. There cannot be any dispute that in the context only of that clause, the interpretation is correct. It is upon that interpretation and because all the plaintiffs were not regraded to the post of clerk/typist in the year 1975 that the defendants contend the plaintiffs should fail in their present claim. The defendants argued that it is one of the conditions that the female clerk's post must be regraded to the post of clerk/typist in the year 1975 before she can benefit from the decision of the first tribunal to be placed in the salary scale of C11. It was also argued on behalf of the defendants that all the plaintiffs had not been established

to be in possession of the SJC or its equivalent. The plaintiffs, on the other hand, argued as regards the first point that the decision should not be construed and looked at in that manner but taking the overall objective of remedying an unfair discrimination of the female workers. As for the second point the parties have, in a statement, agreed that the issue should be, to quote:

> Whether the plaintiffs had passed the Sarawak Junior Certificate or its equivalent.

Therefore, the physical possession of the SJC is not the issue but whether they had passed the examination entitling them to the SJC. The evidence show the first plaintiff to have sat and passed the SJC in 1958 and this fact was stated in a leaving certificate issued by the school she attended. I have no reason to doubt the authenticity of the document nor her evidence which was not really challenged. The second, third, fourth, fifth and sixth plaintiffs all produced a copy of their SJC attesting to their passing the examination leading to the award of the certificate. The seventh plaintiff did not pass the examination though she sat for it and therefore was not in possession of such a certificate.

Another issue which was not seriously pursued was the question of whether all the plaintiffs were performing the duties of both a clerk and a typist. Again, my conclusion is that they were as the evidence in this regard was not challenged by the defendants and in some instant, apart from the plaintiffs, previous colleague or superior testified to the duties performed by the plaintiffs. This is the convenient place to deal with the case of the sevenths plaintiff.

Case of the seventh plaintiff

Clearly she failed to satisfy the condition that she had passed the examination leading to the award of the SJC and thus failed to satisfy that condition before she can claim to be placed in the salary scale of C11. It will be recalled that she claims to be entitled on the basis of the first tribunal decision which lays down, among others, the condition that a person must have passed the SJC, that is, be in possession of a SJC or its equivalent. She had also taken her case to the PST in 1990 where she lost and I see no justification for the court to interfere in that decision, assuming that it can, since it is clear from the evidence that she does not satisfy the education qualification for placement in the C11 salary scale. I turn now to the case of the other plaintiffs

Case for the other plaintiffs

Apart from the said decision of the first tribunal, the decision of the second tribunal is also relied on. The latter decision, apart from the four conditions laid down by the first tribunal, imposed an additional condition for placement in the C11 salary scale and, that is, the person seeking for that placement must be doing (or had done) the same works and responsibilities of a clerk in the F1–4 salary scale which condition is met by all the plaintiffs

since they were doing the same works and responsibilities of the F1–4 salary scale clerk; they were in fact on that salary scale. So, nothing turns on this condition. Also not in dispute is that the plaintiffs were all appointed during the implementation of the Bain's Report but before the implementation of the Suffian's report which is another condition to be met and which is met.

The only issue, as mentioned earlier, is whether it can be argued, as done by Mr Baru Bian, learned counsel for the plaintiffs, that it is not really a condition of the decision that the regrading to the designation of clerk/typist must be done in 1975 and not earlier or later. It will be recalled the plaintiffs were regraded, some earlier and some later than 1975.

The plaintiffs all have legitimate grouses because during the years between 1956 and 1970, they were not given the same pay nor the pension which their male counterparts were getting though they performed the same duties and assumed the same responsibilities as their male counterparts. Though Bain's report recommended that both male and female under the same salary scale should be given the same salary scheme, it was apparently not accepted by the Government of Sarawak because by a circular of the State Secretary dated 10 May 1965, only the male clerk in the F1-4 salary scale was changed to the higher D1A, 1–3 scale (RM135–410) while the females remained as they were in F1–4 salary scale (RM135–410) (but this was improved to RM175–425 after the Suffian's Report). This is recognized by the first tribunal when it made the various findings which were summarized. Why, then, was this condition of the regrading to typist/clerk taking place in 1975 being imposed by the first tribunal? The 1975 regrading exercise had resulted in the female clerks being placed in a post lower than that of a clerk though they performed the duties of a clerk as well but that can only explain the need of the first tribunal to redress that anomaly. But I cannot find any reason why the first tribunal restricted that exercise to only those who were regraded in 1975 and no one can tell me the reason. All the plaintiffs suffered the same consequence of being regraded to 'clerk/typist' but the only difference is that their regrading was not done in 1975 but were done either earlier or later than 1975. This lead Mr Baru Bian, learned counsel for the plaintiffs to argue that the condition should not be read as such. This is what he said:

> My Lord, the defendants and the plaintiffs unfortunately, are not able to see this issue of 're-grading in 1975' in the same light. The defendants' contention all these years in rejecting the plaintiffs' appeals respectively, including the seventh plaintiff's Case Reference No 21 of 1990 (see p 9 of exh P3), rested on their understanding and interpretation of the first tribunal decision on this aspect only. The defendants' contention was and is, is that the plaintiffs must have been regraded in the year 1975 to that of clerk/typist for them to be extended the benefit of the first tribunal decision. To this I respectfully disagree. If read with the facts and the background of the said first tribunal case, no one would come to the defendants' conclusion, an interpretation which was so rigid, unreasonable and misplaced in the light of the facts of that case. It is my respectful submission that, the above decision did not in any way expressly confined its decision only to those female clerks that were regraded in the year 1975. As stated at the outset of my submission, the applicant in this

case referred to the year 1975 because this was the year, when the re-grading of female clerks to that of clerk/typist, was made through an official circular by the fourth defendant. It must be noted, My Lord, that the applicant in this case was the Kesatuan Pegawai-Pegawai Kerajaan Sarawak. They raised the issue of re-grading of female clerk to clerk/typist specifically in 1975, but addressing in essence, the issue affecting all female clerks/typists generally. In the circumstances, the Tribunal's general finding (see pp 11–12 above) must be examined and should be the ratio decidendi of the case, which must be extended and be applicable to this instant case before Your Lordship.

The circular referred to there was issued on 23 January 1975 jointly by the State Secretary and the Federal Secretary and it says:

JOINT CIRCULAR MEMORANDUM

TO: All Heads of State and Federal Departments, Permanent Secretaries to Ministries and Residents.

SUBJECT: Redesignation - clerk, F1-4.

REF: 137/EO/1989Date: 23 January 1975

There are a number of posts of clerk, F1–4 (maximum RM425/-) and clerk, F1–4 (maximum RM485, personal to holder) in the service. It has been decided that this grade of posts should be abolished by redesignating them as clerk/typist, F1–4, with the maximum salary of RM425 or RM485 (personal to holder) as the case may be. In future there will only be one grade of clerk, ie D1A, 1–3 in the General Clerical Service.

You are requested to initiate action to effect the above as soon as possible, either through establishment warrants or through normal estimates exercise. With effect from the date of this joint circular memorandum, no additional post of clerk, F1-4 should be created.

[Signed etc …]

What that circular did was to instruct all the relevant heads of department to redesignate the different post of 'clerk' of F1-4 salary scale to just one of 'clerk/typist'. It also directed that there should be no additional post of clerk under the F1–4 salary scale and that there will be only one grade of clerk, that is under the D1A, 1–3 salary scale. That circular does not lay down any time limit under which the regrading should be done, let alone that it should be done in 1975. When the case was brought to the first tribunal it was brought by the Sarawak Government Officers Union specifically for those who were regraded in 1975 and can be seen from what first tribunal states in their decision, viz:

Pemohon, Kesatuan Pegawai-Pegawai Kerajaan Sarawak, menuntut supaya Kerani perempuan dengan tangga gaji Suffian F1–4: RM175–425 yang telah digredkan semula pada tahun 1975 sebagai Kerani/Jurutaip dan diberi pemindahan kepada tangga gaji D11: RM235–595 di bawah Laporan Jawatankuasa Kabinet diberi pemindahan kepada tangga gaji C11 mulai dari 1 Januari 1976.

Though that was stated earlier in the decision, it also became a part of the ruling that female officers must have been regraded in 1975 whatever the reason. The words of the decision of the first tribunal in that respect cannot

admit of other interpretation. Mr Baru Bian was not able to tell the court why such a condition cannot be imposed.

The second tribunal decision adds nothing to that decision. In fact, they in para 14 of their decision reiterated the condition that the female employees must have been regraded in 1975 for her to benefit from the decision of the first tribunal.

Much sympathy though I have for the silver-haired plaintiffs who had without doubt contributed to what is today a respectable civil service but the law prevents me from extending a helping hand though they all (including the seventh plaintiff who, though she did not pass the examination, possessed the necessary skill and experience and which the second tribunal placed emphasis on) satisfied the conditions for placement in the C11 salary scale except the condition of having been regraded in 1975. The law says I cannot question the wisdom of the two tribunals in imposing the questionable condition and this can be found in ss 15 and 15A of the Act says:

> 15(1) The decision of the Tribunal on any anomaly referred to it shall be final and conclusive, and shall be binding on the Government and all parties to the anomaly; and no decision shall be challenged, appealed against, reviewed, quashed or called in question in any court.
>
> (2) The decision of the Tribunal shall be implemented as soon as practicable, but not later than six months from the date of the decision being given.
>
> (3) Any anomaly referred to the Tribunal and on which the Tribunal has given a decision shall not be raised or be a subject of further reference to the Government in any guise or form by any public officer or a trade union or an association of public officers not being a trade union.
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> (4) The Tribunal shall not entertain any claim by any public officer or a trade union or an association of public officers not being a trade union purporting to be an anomaly consequent upon the effect of a decision on any anomaly under ss 11 or 14.
>
> (5) The decision of the Tribunal on any anomaly referred to it may be made applicable to any public officer on the same scheme of service who is not a party to the anomaly.
>
> 15A If any question arises as to the interpretation of any decision made by the Tribunal, any party bound by the decision of the Tribunal may apply to the Tribunal for the interpretation of such decision and the Tribunal may make such modifications or variations as it deems necessary to the earlier decision solely for the purpose of making clear its decision and removing any ambiguity or uncertainty arising from the original decision.

What the plaintiffs are seeking to do is to challenge or seeking to review or to appeal against the decision of the two tribunals and this s 15(1) of the Act expressly prohibits. The plaintiffs seek the benefit of the two decisions under s 15(5) of the Act but clearly they do not satisfy the condition set by the two tribunals of having been regraded in 1975, not earlier and not later. If the reason for the imposition of that condition is unclear, the plaintiffs perhaps should have acted under s 15A of the Act to seek a clarification but

I must quickly add that I am not saying that they definitely have a right since it is not an issue in this case. There is also the case of *Government of Malaysia v Rohaya bte Mohd Majzub & Ors* [1989] 1 MLJ 96 where the Supreme Court says that the court should not usurp the functions of the Tribunal or the government in matters of salary scales and conditions of service.

Conclusion

In the premises, the plaintiffs' action is dismissed with costs to the defendants. I have gone through the cases submitted by the plaintiffs but I am of the view that none of them can assist the plaintiff's case given what I have said.

Application dismissed.

Reported by Peter Ling